

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 628

Introduced by Landis, 46

Read first time January 21, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to domestic abuse; to amend section 42-931,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Uniform Interstate Enforcement of Domestic Violence
4 Protection Orders Act; to harmonize provisions; to
5 provide an operative date; to provide severability; and
6 to repeal the original section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known
2 and may be cited as the Uniform Interstate Enforcement of Domestic
3 Violence Protection Orders Act.

4 Sec. 2. For purposes of the Uniform Interstate
5 Enforcement of Domestic Violence Protection Orders Act:

6 (1) Foreign protection order means a protection order
7 issued by a tribunal of another state;

8 (2) Issuing state means the state whose tribunal issues a
9 protection order;

10 (3) Mutual foreign protection order means a foreign
11 protection order that includes provisions in favor of both the
12 protected individual seeking enforcement of the order and the
13 respondent;

14 (4) Protected individual means an individual protected by
15 a protection order;

16 (5) Protection order means an injunction or other order,
17 issued by a tribunal under the domestic violence, family violence,
18 or antistalking laws of the issuing state, to prevent an individual
19 from engaging in violent or threatening acts against, harassment
20 of, contact or communication with, or physical proximity to,
21 another individual;

22 (6) Respondent means the individual against whom
23 enforcement of a protection order is sought;

24 (7) State means a state of the United States, the
25 District of Columbia, Puerto Rico, the United States Virgin
26 Islands, or any territory or insular possession subject to the
27 jurisdiction of the United States. The term includes an Indian
28 tribe or band that has jurisdiction to issue protection orders; and

1 (8) Tribunal means a court, agency, or other entity
2 authorized by law to issue or modify a protection order.

3 Sec. 3. (a) A person authorized by the law of this state
4 to seek enforcement of a protection order may seek enforcement of a
5 valid foreign protection order in a tribunal of this state. The
6 tribunal shall enforce the terms of the order, including terms that
7 provide relief that a tribunal of this state would lack power to
8 provide but for this section. The tribunal shall enforce the
9 order, whether the order was obtained by independent action or in
10 another proceeding, if it is an order issued in response to a
11 complaint, petition, or motion filed by or on behalf of an
12 individual seeking protection. In a proceeding to enforce a
13 foreign protection order, the tribunal shall follow the procedures
14 of this state for the enforcement of protection orders.

15 (b) A tribunal of this state may not enforce a foreign
16 protection order issued by a tribunal of a state that does not
17 recognize the standing of a protected individual to seek
18 enforcement of the order.

19 (c) A tribunal of this state shall enforce the provisions
20 of a valid foreign protection order which govern custody and
21 visitation, if the order was issued in accordance with the
22 jurisdictional requirements governing the issuance of custody and
23 visitation orders in the issuing state.

24 (d) A foreign protection order is valid if it:

25 (1) identifies the protected individual and the
26 respondent;

27 (2) is currently in effect;

28 (3) was issued by a tribunal that had jurisdiction over

1 the parties and subject matter under the law of the issuing state;
2 and

3 (4) was issued after the respondent was given reasonable
4 notice and had an opportunity to be heard before the tribunal
5 issued the order or, in the case of an order ex parte, the
6 respondent was given notice and has had or will have an opportunity
7 to be heard within a reasonable time after the order was issued, in
8 a manner consistent with the rights of the respondent to due
9 process.

10 (e) A foreign protection order valid on its face is prima
11 facie evidence of its validity.

12 (f) Absence of any of the criteria for validity of a
13 foreign protection order is an affirmative defense in an action
14 seeking enforcement of the order.

15 (g) A tribunal of this state may enforce provisions of a
16 mutual foreign protection order which favor a respondent only if:

17 (1) the respondent filed a written pleading seeking a
18 protection order from the tribunal of the issuing state; and

19 (2) the tribunal of the issuing state made specific
20 findings in favor of the respondent.

21 Sec. 4. (a) A law enforcement officer of this state,
22 upon determining that there is probable cause to believe that a
23 valid foreign protection order exists and that the order has been
24 violated, shall enforce the order as if it were the order of a
25 tribunal of this state. Presentation of a protection order that
26 identifies both the protected individual and the respondent and, on
27 its face, is currently in effect constitutes probable cause to
28 believe that a valid foreign protection order exists. For purposes

1 of this section, the protection order may be inscribed on a
2 tangible medium or may have been stored in an electronic or other
3 medium if it is retrievable in perceivable form. Presentation of a
4 certified copy of a protection order is not required for
5 enforcement.

6 (b) If a foreign protection order is not presented, a law
7 enforcement officer of this state may consider other information in
8 determining whether there is probable cause to believe that a valid
9 foreign protection order exists.

10 (c) If a law enforcement officer of this state determines
11 that an otherwise valid foreign protection order cannot be enforced
12 because the respondent has not been notified or served with the
13 order, the officer shall inform the respondent of the order, make a
14 reasonable effort to serve the order upon the respondent, and allow
15 the respondent a reasonable opportunity to comply with the order
16 before enforcing the order.

17 (d) Registration or filing of an order in this state is
18 not required for the enforcement of a valid foreign protection
19 order pursuant to the Uniform Interstate Enforcement of Domestic
20 Violence Protection Orders Act.

21 Sec. 5. (a) Any individual may register a foreign
22 protection order in this state. To register a foreign protection
23 order, an individual shall:

24 (1) present a certified copy of the order to the state
25 agency responsible for the registration of such orders; or

26 (2) present a certified copy of the order to an agency
27 designated by the state and request that the order be registered
28 with the agency responsible for the registration of such orders.

1 (b) Upon receipt of a foreign protection order, the
2 agency responsible for the registration of such orders shall
3 register the order in accordance with this section. After the
4 order is registered, the responsible agency shall furnish to the
5 individual registering the order a certified copy of the registered
6 order.

7 (c) The agency responsible for the registration of
8 foreign protection orders shall register an order upon presentation
9 of a copy of a protection order which has been certified by the
10 issuing state. A registered foreign protection order that is
11 inaccurate or is not currently in effect must be corrected or
12 removed from the registry in accordance with the law of this state.

13 (d) An individual registering a foreign protection order
14 shall file an affidavit by the protected individual stating that,
15 to the best of the protected individual's knowledge, the order is
16 currently in effect.

17 (e) A foreign protection order registered under the
18 Uniform Interstate Enforcement of Domestic Violence Protection
19 Orders Act may be entered in any existing state or federal registry
20 of protection orders, in accordance with applicable law.

21 (f) A fee may not be charged for the registration of a
22 foreign protection order.

23 Sec. 6. This state or a local governmental agency, or a
24 law enforcement officer, prosecuting attorney, clerk of the court,
25 or any state or local governmental official acting in an official
26 capacity, is immune from civil and criminal liability for an act or
27 omission arising out of the registration or enforcement of a
28 foreign protection order or the detention or arrest of an alleged

1 violation of a foreign protection order if the act or omission was
2 done in good faith in an effort to comply with the Uniform
3 Interstate Enforcement of Domestic Violence Protection Orders Act.

4 Sec. 7. A protected individual who pursues remedies
5 under the Uniform Interstate Enforcement of Domestic Violence
6 Protection Orders Act is not precluded from pursuing other legal or
7 equitable remedies against the respondent.

8 Sec. 8. In applying and construing the Uniform
9 Interstate Enforcement of Domestic Violence Protection Orders Act,
10 consideration must be given to the need to promote uniformity of
11 the law with respect to its subject matter among states that enact
12 it.

13 Sec. 9. The Uniform Interstate Enforcement of Domestic
14 Violence Protection Orders Act applies to protection orders issued
15 before the operative date of this act and to continuing actions for
16 enforcement of foreign protection orders commenced before the
17 operative date of this act. A request for enforcement of a foreign
18 protection order made on or after the operative date of this act
19 for violations of a foreign protection order occurring before the
20 operative date of this act is governed by the Uniform Interstate
21 Enforcement of Domestic Violence Protection Orders Act.

22 Sec. 10. Section 42-931, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 42-931. ~~(1)~~ A valid foreign protection order related to
25 domestic or family abuse issued by a ~~court~~ tribunal of another
26 state, tribe, or territory shall be accorded full faith and credit
27 by the courts of this state and enforced ~~as if it were issued in~~
28 ~~this state~~ pursuant to the Uniform Interstate Enforcement of

1 Domestic Violence Protection Orders Act.

2 ~~(2) A foreign protection order related to domestic or~~
3 ~~family abuse issued by a court of another state, tribe, or~~
4 ~~territory shall be valid if:~~

5 ~~(a) The issuing court had jurisdiction over the parties~~
6 ~~and matter under the law of such state, tribe, or territory,~~

7 ~~(b) The respondent was given reasonable notice and an~~
8 ~~opportunity to be heard sufficient to protect the respondent's~~
9 ~~right to due process before the order was issued, and~~

10 ~~(c) The protection order from another jurisdiction has~~
11 ~~not been rendered against both the petitioner and the respondent,~~
12 ~~unless: (i) The respondent filed a cross or counter petition,~~
13 ~~complaint, or other written pleading seeking such a protection~~
14 ~~order, and (ii) the issuing court made specific findings of~~
15 ~~domestic or family abuse against both the petitioner and respondent~~
16 ~~and determined that each party was entitled to such an order.~~
17 ~~There is a presumption of the validity of the foreign protection~~
18 ~~order when the order appears authentic on its face.~~

19 ~~(3) A peace officer may rely upon a copy of any~~
20 ~~putatively valid foreign protection order which has been provided~~
21 ~~to the peace officer by any source.~~

22 Sec. 11. This act becomes operative on January 1, 2004.

23 Sec. 12. If any section in this act or any part of any
24 section is declared invalid or unconstitutional, the declaration
25 shall not affect the validity or constitutionality of the remaining
26 portions.

27 Sec. 13. Original section 42-931, Reissue Revised
28 Statutes of Nebraska, is repealed.